



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 117**

**[Docket No. USCG-2019-0892]**

**RIN 1625-AA09**

#### **Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the Route 1 & 9 Bridge, mile 1.8, and Route 7 Bridge, mile 3.1, both crossing the Hackensack River, at Jersey City, NJ. The bridge owner, New Jersey Department of Transportation (NJDOT), submitted a request to allow two hours advance notice for nighttime transits due to infrequent bridge openings. This final rule would align the advance notice requirement for the PATH Bridge at mile 3.0.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2019-0892 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, First Coast Guard District, Project

Officer, telephone 212-514-4336, e-mail Judy.K.Leung-Yee@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On December 19, 2019, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulation; Hackensack River, Jersey City, NJ in the **Federal Register** (84 FR 69687). No comments were received in response to the NPRM.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under the authority of 33 U.S.C. 499. The Route 1 & 9 Bridge at mile 1.8 over the Hackensack River at Jersey City, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water. Horizontal clearance is approximately 200 feet. The waterway users include recreational and commercial vessels including tugboat/barge combinations.

The Route 7 Bridge at mile 3.1 over the Hackensack River at Jersey City, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water. Horizontal clearance is approximately 158 feet. The waterway users include recreational and commercial vessels including tugboat/barge

combinations.

The existing regulation, 33 CFR 117.5, requires both bridges open on signal at all times. NJDOT has requested that overnight hours between 11 p.m. and 7 a.m. be modified to two hours advance notice. This rule change will allow for more efficient and economic operation of the bridge while meeting the reasonable needs of navigation.

The bridge logs show that between 11 p.m. and 7 a.m., the Route 1 & 9 Bridge had 27 annual openings in 2017, 12 annual openings in 2018, and 16 annual openings in 2019. During the subject hours, the Route 7 Bridge had 16 annual openings in 2017, 1 annual opening in 2018, and 0 annual openings in 2019.

#### **IV. Discussion of Comments, Changes and the Final Rule**

The Coast Guard provided 60 days for comment regarding this rule and no comments were received.

There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The final rule provides both Route 1 & 9 and Route 7 Bridges shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the bridge. It is the Coast Guard's opinion that the rule meets the reasonable needs of marine traffic.

#### **V. Regulatory Analyses**

The Coast Guard has developed this rule after considering numerous

statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Coast Guard believes this rule is not a significant regulatory action. The bridge will still open for all vessel traffic after a two-hour advance notice is given during overnight periods. We believe that this change to the drawbridge operation regulations at 33 CFR §117.723 will meet the reasonable needs of navigation.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The bridges provide 35 feet of vertical clearance at mean high water that should accommodate all the present vessel traffic except deep draft vessels. The bridge will continue to open on signal for any vessel, except between 11 p.m. and 7 a.m., when a two-hour advance notice will be required. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-

REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*D. Federalism and Indian Tribal Government*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory

actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.723 by adding paragraphs (j) and (k) to read as follows:

#### **§ 117.723 Hackensack River.**

\* \* \* \* \*

(j) The draw of the Route 1 & 9 Bridge, mile 1.8, at Jersey City, shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the bridge.

(k) The draw of the Route 7 Bridge, mile 3.1, at Jersey City, shall open on signal; except that, from 11 p.m. to 7 a.m., the draw shall open on signal if at least two hours advance notice is given by calling the number posted at the bridge.

Dated: April 21, 2020

A.J. Tionson,  
Rear Admiral, U.S. Coast Guard,  
Acting Commander, First Coast Guard District.  
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